

**REMARKS**

Claims 1, 17, and 53-76 are pending in this application. Claims 1, 17, 53, and 65 are independent. We have amended claims 1 and 17, canceled claims 2-16 and 18-52 without prejudice or disclaimer, and added new claims 53-76. Reconsideration and further examination of the application is respectfully requested.

**Summary of Interview of September 11, 2009 and Other Discussions**

The undersigned spoke with Examiner Rendon (no longer assigned to the present application) several times regarding the present application.

During a brief telephone discussion with Examiner Rendon on September 7, 2009, the undersigned scheduled an interview with Examiner Rendon. On September 11, 2009, the undersigned electronically filed an Interview Request with the U.S. Patent and Trademark Office and sent a copy of the Interview Request to Examiner Rendon via electronic mail.

A telephone interview regarding the present application took place between Examiner Rendon and the undersigned on September 11, 2009. The pertinent portion of the Examiner's summary of the telephone interview of September 11, 2009 (dated September 15, 2009) is presented here as follows:

All participants (applicant, applicant's representative, PTO personnel):

(1) CHRISTIAN E. RENDON

(3) Christopher Aarnew

(2) Ronald Laneau

(4) \_\_\_\_\_

Date of Interview: 11 September 2009

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.

If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: \_\_\_\_\_

Identification of prior art discussed: Simon (US 7172508)

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: The conversation focused on narrowing the subject matter of the claim language. One possible solution that was discussed was including limitations found in claim 3 (jockeys and horses) in the independent claims with further amendments in an attempt to describe a method of betting on a particular jockey who rides in at least four consecutive races (The Triple Crown is an example of three consecutive races) on a different horse in the races. The 112 issues was discussed and suggestions were offered to make the language describe three different ranges each defined by two numbers instead of broadly defining all of the ranges on a single number.

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The undersigned generally agrees with the Examiner's summary of the telephone interview.

As a threshold matter, "Ronald Laneau" is identified as having been a participant in the interview of September 11, 2009. The undersigned is not aware of anyone other than the undersigned and Examiner Rendon being part of the telephone interview. The undersigned does not know who "Ronald Laneau" is, does not know whether "Ronald Laneau" was in fact on all or part of the telephone call, and does not know, e.g., whether Examiner Rendon inadvertently listed "Ronald Laneau" on the Interview Summary form. If "Ronald Laneau" was in fact on the call, "Ronald Laneau" was participating unbeknownst to the undersigned.

In the final Office Action dated November 4, 2008, Examiner Rendon rejected claims **8 and 21** under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. We do not concede that previously pending (now canceled) claims **8 and 21** in any way failed to comply with the enablement requirement. Nonetheless, to advance prosecution toward allowance, the undersigned discussed with Examiner Rendon the prospect of amending the claims to obviate the rejections. Examiner Rendon and the undersigned discussed the Specification and specific amendment language was not discussed in any detail.

In the final Office Action dated November 4, 2009, Examiner Rendon rejected, e.g., independent claims **1 and 17** under 35 U.S.C. § 102(b) as allegedly being anticipated by Simon et al., U.S. Patent No. 7,172,508 B2. In the final Office Action dated November 4, 2009, Examiner Rendon also rejected various claims under 35 U.S.C. § 103(a) as allegedly being unpatentable over Simon et al., U.S. Patent No. 7,172,508 B2 alone or in combination with other references. The undersigned did not, for example, concede (nor do we concede) that the references cited and/or factual assertions used by the Examiner to reject our claims in the Office Action dated May 28, 2009, alone or in combination, disclose or suggest the subject matter of the previously pending versions of claims **1 and 17**, or of previously pending (now canceled) claims **2-16 and 18-52**. For example, the undersigned briefly explained the undersigned's interpretation of at least Simon et al., U.S. Patent No. 7,172,508 B2 generally and in relation to, e.g., the previously pending versions of claims **1 and 17**. Nonetheless, with the goal of advancing prosecution toward allowance, the undersigned discussed the prospect of amending the claims

with Examiner Rendon. We have amended claims **1 and 17**, canceled claims **2-16 and 18-52** without prejudice or disclaimer, and added new claims **53-76**.

On or about October 3, 2009, the undersigned checked the U.S. Patent and Trademark Office PAIR database and saw that Examiner Rendon was no longer assigned to the present application. Rather, Supervisory Patent Examiner Hotaling was identified as being assigned to the present application.

On October 5, 2009, the undersigned spoke very briefly and nonsubstantively with Supervisory Patent Examiner Hotaling in view of his being assigned to the present application. Supervisory Patent Examiner Hotaling indicated that he would consider our response and any amendments in view of the undersigned's previous conversations with Examiner Rendon.

We do not necessarily agree with or acquiesce in any characterization of any claim term or rejection of any claim that Examiner Rendon ("the previous Examiner") may have made in the Interview Summary or during the pendency of the present patent application.

The undersigned greatly appreciates the previous Examiner's time in speaking with the undersigned regarding the present application and for granting an interview after the final Office Action. The undersigned also appreciates speaking with Supervisory Patent Examiner Hotaling regarding the present application.

Supervisory Patent Examiner Hotaling is strongly encouraged to telephone our undersigned representative, **Christopher Agnew, at (857) 413-2050** with any suggestions to advance prosecution and/or to resolve any condition that would impede allowance. Depending on the circumstances and not necessarily for reasons of patentability, we are willing to consider claim amendments and/or claim cancellations if such amendments and/or cancellations will, in our judgment, advance prosecution toward an earlier allowance and/or satisfy our current business objectives.

#### **Claim Amendments**

We do not necessarily agree with the propriety of or concede any of the arguments in the final Office Action dated November 4, 2008 ("Office Action"). Nor do we concede that the previous Examiner made *prima facie* showings for the rejections in the Office Action.

Nonetheless, to advance prosecution and obtain early issuance of some subject matter in early next year rather than forgo the issuance of any subject matter at all early next year, we have

amended claims **1 and 17**, canceled claims **2-16 and 18-52** without prejudice or disclaimer, and added new claims **53-76**. We respectfully request reconsideration and withdrawal of the rejections and further examination of the application.

We have amended claims **1 and 17** and have left these claims pending in order to preserve our right to appeal should we be inclined to file an appeal after, e.g., receiving an Office Action following this Reply.

We reserve the right to file any of, e.g., the previously pending versions of claims **1 and 17** and the canceled claims **2-14 and 16-28** in, e.g., one or more continuing applications.

In particular, previously pending and now canceled claims **28-52** have never been amended. We intend to file the subject matter of these claims in a continuation patent application.

The Office Action did not raise an issue of non-statutory subject matter and we in no way concede that the previously pending versions of, e.g., independent claims **1 and 17** were directed to non-statutory subject matter. Nonetheless, to advance prosecution, obtain early issuance, and to place the claims in condition for a potential appeal, we have amended independent claims **1 and 17** and respectfully submit that these claims are directed to statutory subject matter.

#### **Claim Rejections - 35 U.S.C. § 112**

In the Office Action, the previous Examiner rejected claims **8 and 21** under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

We do not concede that previously pending claims **8 and 21** in any way failed to comply with the enablement requirement. Nor do we concede that the previous Examiner made a *prima facie* showing that previously pending claims **8 and 21** failed to comply with the enablement requirement of 35 U.S.C. § 112. See, e.g., Applicants' Reply Pursuant to 37 C.F.R. § 1.111, dated August 15, 2008, at page 17; and Applicants' Pre-Appeal Brief Request for Review, dated May 4, 2009, at page 2.

Nonetheless, to advance prosecution and obtain early issuance, we have canceled claims **8 and 21**, so the rejection is now moot.

Moreover, we have added new claims **53-76** and, particularly new claims **58 and 70** include language that obviates any rejection under 35 U.S.C. § 112, first paragraph.

Accordingly, we respectfully request reconsideration and withdrawal of the rejections.

**Claim Rejections - 35 U.S.C. § 102**

In the Office Action, claims **1, 3, 4, 9-13, 15-17, and 22-26** were rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Simon et al., U.S. Patent No. 7,172,508 B2 ("**Simon**").

We do not necessarily agree with or concede any of the arguments in the Office Action regarding, e.g., **Simon**. Nor do we concede that the previous Examiner made a *prima facie* showing that the previously pending versions of claims **1 and 17** and previously pending claims **3, 4, 9-13, 15, 16, and 22-26** were anticipated under 35 U.S.C. § 102(b).

For example, the previously pending versions of independent claims **1 and 17** (as well as amended independent claims **1 and 17**) are believed to be allowable for at least the reasons described in Applicants' Reply Pursuant to 37 C.F.R. §1.111, dated August 15, 2008 (see pages 18-19) and in Applicants' Pre-Appeal Brief Request for Review, dated May 4, 2009.

Nonetheless, to advance prosecution and obtain early issuance of some subject matter in early next year rather than forgo the issuance of any subject matter at all early next year, we have amended claims **1 and 17** and canceled claims **3, 4, 9-13, 15, 16, and 22-26** without prejudice or disclaimer, and have added new claims **53-76**. We respectfully request reconsideration and withdrawal of the rejections.

**Claim Rejections - 35 U.S.C. § 103**

In the Office Action, the previous Examiner rejected claims **14 and 27** under 35 U.S.C. § 103(a) as allegedly being unpatentable over **Simon**. In the Office Action, the previous Examiner also rejected claims **5-8 and 18-21** under 35 U.S.C. § 103(a) as allegedly being unpatentable over **Simon** in view of Friedman, U.S. Patent No. 6,126,543 ("**Friedman**"). In the Office Action, the previous Examiner also rejected claims **28, 29, and 31-52** under 35 U.S.C. § 103(a) as allegedly being unpatentable over **Simon** in view of **Friedman** and in further view of Ken Daley "Handicapping the Race; Bet on McGwire surging past Maris, Sosa fading at the wire" ("**Daley**"). In the Office Action, the previous Examiner also rejected claims **2, 10, 11, 23, and 24** under 35 U.S.C. § 103(a) as allegedly being unpatentable over **Simon** in view of McNutt et al., U.S. Patent No. 6,837,791 B1 ("**McNutt**"). In the Office Action, the previous Examiner also

rejected claim **30** under 35 U.S.C. § 103(a) as allegedly being unpatentable over Simon in view of Friedman and in further view of Daley and in further view of McNutt.

We do not necessarily agree with or concede any of the arguments in the Office Action regarding, e.g., Simon, Friedman, Daley, McNutt, and/or various factual assertions. Nor do we concede that the previous Examiner made a *prima facie* showing that previously pending claims **2, 5-8, 14, 18-21, and 27-52** were obvious, i.e., unpatentable under 35 U.S.C. § 103(a).

Nonetheless, to advance prosecution and obtain early issuance of some subject matter in early next year rather than forgo the issuance of any subject matter at all early next year, we have canceled claims **2, 5-8, 14, 18-21, and 27-52** without prejudice or disclaimer, and added new claims **53-76**. We respectfully request reconsideration and withdrawal of the rejections.

### Conclusion

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

We believe that the application is in condition for allowance, which action is respectfully requested at the Examiner's earliest convenience.

### Comment Regarding Claim Amendments

None of the statements below is intended to be an addition to or alteration of the written description of the application as filed. None of the statements below is a statement of what is or is not included in the written description of the application as filed.

In responding to this Office Action, we have made several amendments. We wish to make clear in amending the claims that, unless otherwise noted, "a," "an," or "the" means "one or more" and/or "at least one." For example, "an X" means "one or more X," and/or "at least one X."

Unless otherwise noted, "at least one of X, Y, and Z" is intended to be broad enough to include any of the following (and/or any unstated combination of the following): "only X," "only Y," "only Z," "one or more X," "one or more Y," "one or more Z," "only X and Y," "only X and Z," "only Y and Z," "one or more X and one or more Y," "one or more X and one or more Z," "one or more Y and one or more Z," "only X, Y, and Z," and "one or more X and one or more Y and one or more Z."

**Authorization for Email Communication**

Recognizing that Internet communications are not secure, we hereby authorize the USPTO to communicate with any authorized representative concerning any subject matter of this application by electronic mail. We understand that a copy of these communications will be made of record in the application file.

**General Authorization for All Fees During Pendency of this Application**

For the entire pendency of the application, the Commissioner of Patents is hereby authorized to charge all fees, or credit any overpayment, to our Deposit Account No. 50-3938.

Supervisory Patent Examiner Hotaling is strongly encouraged to telephone our undersigned representative, Christopher Agnew, at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, we petition for any extension of time required to make this response timely and otherwise not present. Kindly charge any additional fee, or credit any surplus due for any reason, to Deposit Account No. 50-3938.

Respectfully submitted,

Dated: December 4, 2009

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